

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	MDL No. 2262
THIS DOCUMENT RELATES TO:	Master File No. 1:11-md-2262-NRB
OTC ACTION	
DIRECT ACTION PLAINTIFFS	

STIPULATION AND [PROPOSED] ORDER CLARIFYING THE SCOPE OF DR. DENNIS CARLTON'S OPINIONS AND TERMINATING PLAINTIFFS' DAUBERT MOTION

WHEREAS, Defendants JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Dublin plc, JPMorgan Markets Limited, and Bear Stearns Capital Markets, Inc. (together, "JPMorgan") have retained an expert economist, Dr. Dennis Carlton, in this litigation who prepared three expert reports¹ that JPMorgan submitted to the Court in conjunction with its summary judgment motion dated October 4, 2024, ECF Doc. No. 4171;

WHEREAS, Dr. Carlton was deposed on July 30, 2024 and September 12, 2024.

WHEREAS, on October 4, 2024, the OTC Plaintiffs (Mayor and City Council of Baltimore, City of New Britain, Vistra Energy Corp., Yale University, and Jennie Stuart Medical Center, Inc.), the Federal Deposit Insurance Corporation as Receiver for 20 Closed Banks, Principal Financial Group, Inc., Principal Financial Services, Inc., Principal Life Insurance Company, Principal Funds, Inc., and Principal Variable Contracts Funds, Inc., joined by The Federal Home Loan Mortgage Company (collectively, with the OTC Plaintiffs, "Plaintiffs," and together with JPMorgan, the "Parties"), filed a motion to exclude certain opinions of Dr. Carlton

¹ See [October 4 Declaration of Alan Turner], ECF Doc. No. 4179, Exs. 20-22 (Carlton Opening; Carlton Rebuttal; Reply Report of Dennis W. Carlton dated Aug. 16, 2024 ("Carlton Reply")) (together, the "Reports").

on the ground that he “offers the impermissible opinion that, in fact, JPMorgan did not participate in the alleged conspiracy.” ECF Doc. No. 4161.

WHEREAS, JPMorgan disputes Plaintiffs’ contention that any of the Reports contain “testimony stating ultimate legal conclusions,” *United States v. Bilzerian*, 926 F. 2d 1285, 1294 (2d Cir. 1991), or opinions tantamount to “tell[ing] the jury what result to reach,” *Nimely v. City of New York*, 414 F.3d 381, 397 (2d Cir. 2005), but rather comport with courts’ regular practice of permitting experts in antitrust cases to opine on whether “evidence is consistent with . . . collusion,” *B&R Supermarket*, 2024 WL 4252031, at *8.

AND WHEREAS, the Parties seek to resolve this dispute without Court intervention;

NOW, THEREFORE, the undersigned parties, through their attorneys and subject to the Court’s approval, stipulate as follows:

1. Counsel for JPMorgan will not elicit, and Dr. Carlton will not offer, testimony at trial expressing (a) the ultimate conclusion that JPMorgan (or any other alleged co-conspirator) did not enter into an agreement or conspiracy to persistently suppress USD LIBOR, or (b) his view that the record shows JPMorgan (or any other alleged co-conspirator) did not enter into an agreement or conspiracy to persistently suppress USD LIBOR;
2. Nothing in this stipulation shall preclude Dr. Carlton from offering opinions or testimony other than opinions and testimony expressly identified in Paragraph 1 herein. For the avoidance of doubt, counsel for JPMorgan may elicit, and Dr. Carlton may offer, testimony at trial expressing the opinion that the market structure and behavior, economic conditions, competitive incentives, conduct of JPMorgan

and other market participants, and record evidence, are inconsistent with collusion and consistent with unilateral action;

3. OTC Plaintiffs reserve all challenges – other than those under *Daubert* and Federal Rule of Evidence 702 – to the admissibility of Dr. Carlton’s testimony and opinions at trial.
4. Dr. Carlton is not required to amend any of the Reports;
5. Plaintiffs’ Motion to Exclude Certain Opinions of Dr. Dennis Carlton, ECF Doc. No. 4159, is withdrawn.

January 21, 2025

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*Limited, and Bear Stearns Capital Markets,
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SO ORDERED

Dated: January 24, 2025

New York, New York



Hon. Naomi Reice Buchwald
United States District Judge